S.B.CIVIL WRIT PETITION NO.5648/1994

Youth Coordinator, Nehru Yuva Kendra, Bikaner
v.
Labour Court, Bikaner & Anr.

DATE OF ORDER :: 10th May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.N.Trivedi, for the petitioner.
Mr. Vijay Mehta, for the respondent-workman.

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The petitioner, a society registered under the Societies Registration Act, 1860 (hereinafter referred to as "the Act of 1860"), preferred this petition for writ assailing validity, propriety and correctness of the award dated 30.8.1993 passed by the Labour Court, Bikaner in Industrial Dispute No.43/1992. By the award aforesaid, learned Labour Court while declaring retrenchment of the respondent workman by the petitioner employer w.e.f. 31.3.1987 illegal and unjustified ordered for his reinstatement in service with all back wages. The award aforesaid was outcome of exparte proceedings against the petitioner as despite service of notice none appeared on its behalf before the Labour Court.

While assailing validity of the award impugned it is contended by counsel for the petitioner that as a matter of fact the reference made by the State of Rajasthan while exercising powers under Section 10(1) of the Industrial Disputes Act, 1947

(hereinafter referred to as “the Act of 1947”) itself was bad being without jurisdiction as the appropriate government relating to the industrial dispute in question was Central Government. The another contention of counsel for the petitioner is that there was no occasion for the Labour Court to proceed exparte in the mater as there was a reasonable cause for employer to remain absent on the date/dates fixed by the Labour Court in the proceedings in question.

I do not find any substance in both the contentions raised by learned counsel. The employer “Nehru Yuva Kendra” is a society registered under the Act of 1860 and its administrative functions is within the authority vests with its Board of Governors and also with other bodies/committees as may be conducted or appointed by the Board of Governors. According to the definition of term “appropriate government” in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, the appropriate government shall be Central Government and test to decide as to whether the industry is carried on by or under the authority of the Central Government is that whether such an industry is carried on by a Central Government company or under the authority of the Central Government. Such an authority may be conferred by statute or by virtue of relationship of principal and agent or delegation of power.

In the instant matter no authority is delegated by the Central Government by a statute or otherwise and the Nehru Yuva Kendra was established to achieve certain objects mentioned in its own constitution. Such an autonomous body cannot be said to be an industry carried on by or under the authority of the Central Government. It is pertinent to note that in the instant matter the respondent workman also at the first instance by treating the Central Government as an appropriate government raised the dispute before the Assistant Labour Commissioner (Central), Jaipur but by communication dated 24.1.1990 it was communicated to the workman that, "the said establishment is an autonomous body registered as a society under the Act of 1860, it has thus a distinct status, its activities can, therefore, not said to be carried on by or under the authority of the Central Government. The establishment, therefore, falls in the jurisdiction of the State Government for the purpose of the Act of 1947". The Assistant Labour Commissioner (Central), Jaipur looking to the nature of administrative and financial working of the petitioner employer rightly held that the appropriate government with regard to industrial dispute in question was State Government.

The award impugned was passed as a consequent to the exparte proceedings as nobody put in appearance

on behalf of the employer on 9.10.1992 despite service of notice. The award was passed on 30.8.1993 but the employer never cared to know about the status of the case after receiving notice to appear before the Labour Court. The only reason given by the employer for not remaining present on the day the matter was fixed before the Labour Court is that “the Youth Coordinator of the Kendra having a power bound programme every month to conduct the programme and organise the activities of students which is the main object of the Kendra and secondly there is only one Youth Coordinator in Kendra who look after all affairs of the Kendra”. The reason forwarded by the petitioner for remaining absent is of no merit. After receiving notice from the Labour Court the Youth Coordinator should have appeared before the Court and atleast should have appointed some representative to appear before the court on the day concerned. The industrial dispute even after 9.10.1992, the date for which a notice for appearance was given remained pending before the court for about ten months, however, the employer never cared to know about status of the case. In these circumstances the Labour Court was left with no option but to proceed exparte against the employer. It is further relevant to note that before approaching this Court the employer even did not choose to move an application under Rule 22-A of the Rajasthan Industrial Disputes Rules, 1950 for recalling the award dated 30.8.1993.

In totality of the facts and circumstances of this case, I do not find any error in the award impugned, however, even by admission of facts pleaded by the workman he remained in service of the petitioner from 1.8.1986 to 31.3.1987 i.e. a period of 245 days only. He was retrenched from service on 31.3.1987, meaning thereby about a period of more than two decades from today. In such circumstances, I consider it appropriate to substitute the relief granted by the Labour Court i.e. of reinstatement by making payment of compensation in a tune of Rs.30,000/-.

The writ petition is accordingly disposed of with a modification in the award impugned dated 30.8.1993 by substituting the relief of reinstatement with back wages by payment of compensation in a tune of Rs.30,000/-.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.